

Handler, a fellow in my office, be given floor privileges for the duration of Senate consideration of Executive Calendar No. 1, the Resolution of Ratification accompanying the Moscow Treaty.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—S. 3

Mr. FRIST. Mr. President, I ask unanimous consent that at 5 o'clock on Monday, March 10, the Senate begin consideration of Calendar No. 19, S. 3, regarding the procedure commonly known as partial-birth abortion.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, let me just say I appreciate the leader working with us on the time on this bill. I know it has been inconvenient but we appreciate it very much.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Calendar Nos. 40, 41, 42, 44, 45, and 47; I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed, as follows:

DEPARTMENT OF JUSTICE

Jeremy H. G. Ibrahim, of Pennsylvania, to be a Member of the Foreign Claims Settlement Commission of the United States for the term expiring September 30, 2005.

Edward F. Reilly, of Kansas, to be a Commissioner of the United States Parole Commission for a term of six years.

Cranston J. Mitchell, of Missouri, to be a Commissioner of the United States Parole Commission for a term of six years.

THE JUDICIARY

Timothy C. Stanceu, of Virginia, to be a Judge of the United States Court of International Trade.

DEPARTMENT OF JUSTICE

Peter Joseph Elliott, of Ohio, to be United States Marshal for the Northern District of Ohio for the term of four years.

DEPARTMENT OF HOMELAND SECURITY

Janet Hale, of Virginia, to be Under Secretary for Management, Department of Homeland Security.

SENATE CONFIRMATION OF ADDITIONAL PRESIDENTIAL EXECUTIVE AND JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, today we have proceeded with the President's

nominations to the U.S. Parole Commission, among others. These individuals were the selections of the White House without consultation with the Democratic leader or with me or other Democratic Senators interested in these matters. We have proceeded on the President's nominees expeditiously and in good faith trusting that the White House will follow through expeditiously to nominate those members to the U.S. Parole Commission that the Democratic leader is recommending to fill the seats allocated to Democrats on what should be a bipartisan commission.

This President has too often in the past proceeded unilaterally on what have traditionally been bipartisan boards and commissions. Last year the White House caused significant problems for all nominations when it failed to follow through in a timely way on a commitment made to Senator McCain. That led to objections and cloture votes being required on a series of the President's judicial nominations and unnecessary delays with respect to both judicial and executive nominations because of objections from the Republican side.

With respect to all nominations, I urge the President to begin to work with us. Just as this White House has failed to work with Senate Democrats on judicial nominees, it has often failed to work with us on nominations to bipartisan boards and commissions. We would appreciate this White House beginning to work with us rather than dictate to us.

Just this week Thomas E. Mann, a distinguished scholar and senior fellow in governance studies at The Brookings Institution, wrote a column about the deteriorating relations between the White House and the Congress with respect to the nomination and confirmation process. While I do not agree with all of his observations, I note that he correctly observed that after the President's campaign as a uniter not a divider, we did expect more cooperation. And after the attack of September 11, when Democrats sought to close ranks and forego partisanship, we were disappointed by the continuing partisanship of the White House. Mr. Mann wrote: "After the 2000 election and then again after Sept. 11, 2001, Democrats expected something akin to a government of national unity. Instead, they encountered a president who seemed determined to wage institutional, ideological and partisan war."

Mr. Mann concluded by suggesting: "The only way to break this cycle of escalation is for Bush to take preemptive action by submitting a more balanced ticket of judicial nominees and engaging in genuine negotiations and compromise with both parties in Congress." I agree, that would be a useful development. I add that it would be long overdue.

Today, on the day the Senate has moved off the Estrada nomination because of the lack of cooperation by the

administration, the Senate is with the consent of every Democratic Senators agreeing to the confirmation of another judicial nominee, the 104th for this President, and several executive branch nominees.

I ask consent to print Thomas E. Mann's column in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the RollCall, Mar. 5, 2003]

GUEST OBSERVER

(by Thomas E. Mann)

ESTRADA CAUGHT IN "POISONOUS WAR" BASED ON IDEOLOGY

The extended Senate debate on the nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit has generated pitched battles between party activists around the country and increasingly shrill commentary from pundits. Some claim we are on the verge of a constitutional coup that effectively nullifies a president's power over judicial appointments. Others respond that we are witnessing a legitimate effort by the Senate minority to prevent the packing of the federal judiciary with right-wing jurists.

How unprecedented is the tactic embraced by Senate Democrats? What accounts for the partisan struggle now playing out on the Senate floor? Is there any way out?

Filibusters have been a prominent feature of the Senate since the early 19th century. While the constitutional framers built no supermajority requirements for the passage of legislation or the confirmation of appointees, the early Senate, unlike the House, did away with its motion on the previous question that would have allowed a majority to cut off debate and proceed with a vote. As a consequence, for virtually all of their chamber's history Senators have been able to postpone or prevent floor action by talking at length.

Under pressure from President Woodrow Wilson, the Senate adopted a cloture provision in its rules that allowed a supermajority to cut off debate. For much of the 20th century the filibuster was mostly reserved for issues of great national moment. In the past several decades, the Senate has seen the routinization of the filibuster, to the point where it is commonly accepted by both parties that with limited exceptions, 60 votes are needed to pass controversial matters. Some exceptions are built into the rules. The budget process provides for limited debate on budget resolutions and reconciliation bills, thereby empowering a majority of Senators. Other exceptions flow from informal understandings or norms. One of those norms is that the minority party does not use extended debate to kill judicial nominations favored by a majority of Senators.

During periods of divided party government, the Senate majority can frustrate the president's ability to fill judicial vacancies simply by refusing to schedule committee hearings or votes on nominees. Between 1995 and 2000, roughly a third of President Bill Clinton's circuit court appointees were killed in this manner by the Republican majority, holding open judgeships that President Bush now seeks to fill. The Democrats responded in kind to a number of President Bush's nominees during their brief time in the majority.

The crunch comes when one party controls both the White House and Senate. Minority Members can try to delay action on judicial nominees with holds and procedural moves in committee. But their doomsday weapon is